

THE LEGAL ASSISTANCE OFFICES OF
III CORPS, 1ST CAVALRY DIVISION, 4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TEXAS 76544

SPOUSE BENEFITS

I. INTRODUCTION - Many soldiers and family members are not aware that there are substantial financial and other benefits available to a surviving spouse in the event of a soldier's death on active duty or after retirement, or to a former spouse following a divorce. This handout provide an overview of those benefits.

II. DEATH ON ACTIVE DUTY

A. The Army will appoint a Casualty Assistance Officer (CAO) to help with all benefits. A Summary Court Officer may be appointed to inventory and dispose of personal effects if necessary.

B. The Army provides burial rights - care for remains, delivery to place designated by primary next of kin, and a burial allowance to help with costs.

C. The Army provides for the travel of family members and the shipment of household goods to the official home of record or residence of the family member within one year of death.

D. *Financial Benefits:*

(1) Death Gratuity - Up to \$6,000 paid to spouse within 72 hours. If no spouse, to children in equal shares without regard to age or marital status. If neither, to parents, brothers or sisters as the soldier chooses on DD Form 93 (Emergency Data Form).

(2) Dependency and Indemnity Compensation (DIC) - Tax-free benefit paid by the VA to the eligible survivors of soldiers who die on active duty, or after release from active duty, if death is due to a service-connected disability.

(a) DIC monthly payments are made to a surviving spouse in the amount of \$850. DIC is payable for the lifetime of the spouse, until remarriage. If the remarriage is terminated by death, divorce or annulment, the surviving spouse can apply to the VA to have the DIC resume. An additional \$215 per month is paid for each child under age 18.

(b) If there is no surviving spouse, DIC is paid in equal shares to the children until age 18. DIC will pay \$361/month for one child, \$520/month for two children, and \$132/month for each additional child.

(c) DIC for children is discontinued when they marry regardless of age or status.

(d) Parents of the deceased soldier may be entitled to payments depending on how much income they receive from other sources. Eligible parents may receive compensation even though it is being paid to a spouse or children. No other relatives are entitled to DIC.

(3) SGLI - Servicemen's Group Life Insurance now yields (up to) \$200,000, for which the premium is \$16/month. Minor children should not be listed as primary beneficiaries, as this will

necessitate a court proceeding to get the money released. It is preferable to make the children's trustee, named in a will, the beneficiary. See a Legal Assistance attorney for details.

(4) Pay and Allowance Due - Any pay and allowances due the soldier at the time of death, including pay of earned leave beyond 60 days, will be paid to the beneficiary designated on DD Form 93.

(5) Burial Allowance:

(a) VA pays a \$300 burial allowance, plus a \$150 plot allowance if buried in a private cemetery, or \$1,500 if the cause of death is service-connected.

(b) Social Security Administration - \$255 lump sum payment to the spouse, then paid to child(ren) who are eligible to receive Social Security survivor benefits.

(6) Social Security - Payments may be made to eligible survivors of deceased soldiers if survivors meet one of the following criteria:

(a) Surviving children under 16;

(b) Widow(er) of the decedent at any age if he or she has care of a natural or legally adopted child under 16 or a disabled child;

(c) Dependent parents on reaching age 62 if they were receiving at least one-half their support from the deceased soldier

(7) Survivor Benefit Plan (SBP) - for surviving spouses of soldiers eligible for retirement at 20 years, but still on active duty. Annuity is up to 55% of retired pay, offset by DIC. A surviving spouse receives the annuity under this plan until death or remarriage **before age 55**. If a remarriage before 55 is ended by death, annulment or divorce, annuity will resume. Remarriage after 55 does not affect payment of the annuity.

EXAMPLE: LTC X dies on active duty at 20 years. Retired pay = 50% of base pay, approximately \$2,547. SBP = 55% of base amount (here, same as retired pay) = \$1,400.85. DIC = \$850. SBP is offset by DIC, so SBP pays \$550.85. This is OK, since DIC is tax free, and SBP is taxable income. SBP payments are reduced to 35% of the base amount when widow(er) reaches 62, unless supplemental SBP is chosen.

E. *Other Benefits:*

(1) Housing Allowance - Spouse may receive if sponsor was eligible at time of death. Family members may stay in quarters up to 180 days after death without charge, or a combination of quarters and BAH not to exceed 180 days. Families who reside off post are paid monthly by DFAS for 180 days.

(2) Medical Care for:

(a) An unremarried spouse;

(b) An unmarried child under 21;

(c) A parent or parent-in-law (natural or adoptive) who is or was at the time of death of the soldier, depending on him or her for over one-half of their support and living in a place provided or maintained by the soldier. Parents and parent-in-law are not authorized care from civilian sources.

(3) Commissary - Unremarried spouse only.

(4) Post Exchange - Unremarried spouse and dependent children under 21 are eligible. Unmarried children under 23 are eligible if they are dependent on the sponsor for more than one-half their support and are enrolled full-time in college.

(5) Legal Assistance - Unremarried spouse and dependent children under 21 are eligible. Unmarried children under 23 are eligible if they are dependent on the sponsor for more than one-half their support and are enrolled full-time in college.

(6) Education - The Dependent's Educational Assistance Act (DEA) provides benefits to spouses, surviving spouses, and children of 100% service-connected disabled veterans or veterans who died from a service-connected disability. The act provides for educational aid allowance for a maximum of 45 months. Generally, students must be between 18 and 26, and marriage does not affect the entitlement.

(7) ID Card - The family member needs a new ID card to show they are a family member of a deceased soldier. The spouse must turn in the ID card upon remarriage. The children must turn in their ID card upon marriage.

III. DEATH OF A RETIREE

A. *Military retired pay* - ends.

B. *Social Security* - Surviving spouse of a retiree receives benefits for the children until the youngest child reaches 16. No further social security until age 60. This is called the "blackout period."

C. *SBP* - fills in the gap

(1) SBP is paid to a surviving spouse for life unless remarriage occurs before age 55. No effect on payments if remarriage is after age 55. Payment can resume if a remarriage before age 55 is terminated by death, annulment or divorce.

(2) **Spouse's consent and signature** are necessary if member wants to decline SBP, elect less than maximum coverage, or elect coverage for child only.

(3) Cost is tax-exempt, so gross taxable retired pay is reduced by the cost of SBP.

(4) SBP at retirement: Assume LTC X retires after 20 years. Spouse is 41 years old. Couple has three children, ages 3, 5 and 10. Retirement pay is \$2,547. SBP = 55% of base. Base can be gross monthly retired pay or as little as \$300/month. SBP with full amount of base = 55% of \$2,547 = \$1,400.85/month.

(a) SBP Cost - 6.5% of base amount. For example 6.5% of \$2,547 = \$165.55/month for SPOUSE ONLY coverage.

(b) Cost For SPOUSE AND CHILDREN - Payments are to surviving spouse until no longer eligible by reason of death or remarriage before age 55, then to unmarried children under 18 (23 if in school full time). Payments are shared equally by eligible children. Deductions for children stop when no eligible children.

EXAMPLE: Spouse only cost = \$165.55. Children cost coverage factor is .055% x base. \$2547 x .055% = \$1.40

(c) Cost for CHILDREN ONLY - Cost is based upon actuarial tables comparing the ages of the retiree and the youngest child. Paid only to unmarried children under 18 (23 if in school) unless the child is incapacitated. There is no age limit for incapacitated children. Cost stops when no eligible children.

(d) COST OF LIVING RAISES: If retired pay is increased, SBP recipients receive same increase, but SBP cost also increases by the same percentage.

(e) DIC OFFSET: If member dies on active duty, spouse receives DIC. If member dies while retired, spouse receives DIC only if death was service connected. Any SBP annuity to which the surviving spouse is entitled will be reduced by amount of spousal DIC entitlement. This is good because DIC is tax free. Pro rata return of SBP premiums paid if DIC is paid.

(f) SBP VS. COMMERCIAL INSURANCE:

1. SBP costs less because the government subsidizes;
2. SBP premiums are not taxable income to the retiree;
3. Cost of living increases for SBP;
4. SBP available to all retirees regardless of health;
5. Adding children to spouse coverage is low in cost;
6. Commercial insurer more likely to go out of business than the Government;
7. Can only decide to get SBP at the time of retirement;
8. Limited opt out. There is a one-time window for all retirees who have been retired at least two years to opt out or reduce their SBP base amount, with the written consent of their spouse, between May 1998 and May 1999. All future retirees will be able to opt out between their 24th and 36th months of retirement;
9. Payments stop if spouse remarries before age 55;
10. SBP is 55% of base until age 62, then drops to 35% of base.
11. SBP is subject to change by Congress;

(g) SUPPLEMENTAL SBP SSBP -

1. Replaces some or all of the SBP annuity reduction that takes place when a surviving spouse reaches the age of 62.

2. SSBP is only in increments of 5, 10, 15 or 20 percent. When increments are added to the standard SBP annuity - 35 percent of base amount - payable at age 62 or older. SSBP will provide a total annuity equal to 40, 45, 50 or 55 percent of monthly gross military retired pay.

3. SSBP rates are established according to your age on your birthday nearest the date your election first becomes effective. Must elect 100% of retirement pension as base to elect SSBP.

D. Other Possible Benefits -

(1) Medical care, commissary, PX and other privileges continue until remarriage and for children under 21.

(2) Life insurance:

(a) Servicemen's Group Life Insurance (SGLI) - Continues for 120 days after leaving service at no cost. May be converted to Veterans Group Life Insurance (VGLI) upon retirement. VGLI is a renewable 5 year term insurance. After 5 years, may convert to commercial policy without proof of insurability at current rates for age or may be continued as VGLI at increased rates. True benefit is no requirement for physical examination.

(b) Whole Life. Enables you to pay a guaranteed fixed premium for the life of the contract and provides a minimum guaranteed death benefit, but premiums are generally higher than term insurance. Premiums are invested in the company's general account and earn interest or dividends. A whole life policy also builds cash value, which is the aggregate value of premiums paid plus any dividends earned, less administrative fees, front-end sales fees, state premium taxes and other expenses.

(c) Term. This type of policy has no cash value. In addition, a death benefit is paid only if the insured dies during a specified period. Although premiums are lower than whole life for younger insured parties, they are likely to be significantly higher when an insured seeks to renew at the end of the contract term.

(d) There are many other life insurance vehicles, such as variable life, universal life, and variable universal life, that are beyond the scope of this outline. These types of contracts provide features such as flexible premium payments, adjustable death benefits, and the ability to invest premiums in underlying investment portfolios.

IV. DIVORCE

A. *Alimony* - taxable to recipient; deductible for the payer.

B. *Child support* - taxable to the payer. Most states have statutory guidelines that determine the amount of child support to be paid.

C. *Uniformed Services Former Spouses Protection Act* (10 USC 1408)

(1) Allows, but does not require state courts to consider disposable military retired pay as marital or community property to be split between the husband and wife upon divorce. "Disposable military retired pay" refers to gross retired pay less certain deductions (e.g. disability pay). Disability retired pay cannot be divided under this act.

(2) Most courts are willing to divide military retired pay; some condition division on a vesting requirement (i.e., the member must be retired or retirement eligible)

(3) Allows automatic payment from the finance center if married 10 years while spouse on active duty for 10 years or court awards portion of retired pay as alimony or child support.

(4) 20/20/20 former spouse -unremarried former spouse who was married for at least 20 years, spouse on active duty for 20 years and marriage overlapped 20 years of active duty is entitled to medical care if not in employer-sponsored health care plan, PX and the commissary regardless of when the divorce was final.

(5) 20/20/15 former spouse divorced prior to 1 April 1985 - 20 year marriage, 20 years active duty in which the marriage only overlapped 15 years is entitled to full medical care (no PX or Commissary) if not in employer-sponsored health care plan.

(6) 20/20/15 former spouse divorced after 1 April 1985 - 1 year of transitional military medical care followed by the right to convert to a DoD Continued Health Care Benefit Program (CHCBP). This program resembles CHAMPUS or Tricare Standard, but is premium based. In other words, you must pay for it. Coverage is limited to 30 months.

(7) All other former spouses are entitled to use the CHCBP.

(8) All benefits terminate upon remarriage.

D. *Other Benefits* -

(1) Military ID card for children to age 21 as long as a dependent of a military parent.

(2) SBP and life insurance for you or children may be negotiated in the divorce.

II. DOCUMENTS NEEDED TO CLAIM BENEFITS

A. Birth certificate.

B. Marriage certificate.

C. Divorce Decrees.

D. Changes in name (court orders).

E. Military Separation Certificate (DD Form 214).

F. Retirement Orders.

G. Death Certificate.

**FOR ADDITIONAL INFORMATION CONTACT THE LEGAL ASSISTANCE
OFFICES ON FORT HOOD: III Corps, Building 1001, Room C224, 287-7901/3199; 1st
Cavalry Division, Building 28000, Room 1155, 287-6060; 4th Infantry Division (Mech),
Building 410, Room 175, 287-1850.**